

NO. 5:17-CR-121-1H(2)

V.

Defendant

First, the government argues the M&R contains errors in fact, both through erroneous affirmative recommended findings and in omissions in its recommended findings. The court has reviewed each of the eight specific factual objections and finds each to be without merit as they are either proper findings or omissions which are not material or relevant to the legal analysis.

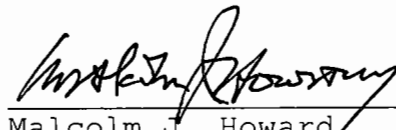
The government also objects to the M&R's conclusion that the warrantless search in this case did not fall within the special needs exception of the Fourth Amendment because the search was not authorized by statute. The court has carefully reviewed this issue and finds the M&R to contain a thorough and correct special needs analysis under Griffin v. Wisconsin, 483 U.S. 868 (1987). While the government believes the proper inquiry would be whether the search was reasonably related to defendant's post release supervision, the court finds this objection to be without merit and inapplicable here. The M&R's analysis under Griffin is proper. The government also objects to the M&R's analysis of the balancing test under United States v. Knights, 534 U.S. 112 (2001) and Samson v. California, 547 U.S. 843 (2006). However, the court has reviewed this analysis and finds it to properly find that the search was not reasonable under the totality of the circumstances.

The court has carefully considered all of the government's objections and finds them to be without merit.

A full and careful review of the M&R and other documents of record convinces the court that the recommendation of the magistrate judge is, in all respects, in accordance with the law and should be approved. Accordingly, the court adopts the recommendation of the magistrate judge as its own; and for the reasons stated therein, the defendant's motion to suppress, [DE #24], is GRANTED.

Also pending before the court is defendant's motion for hearing on pretrial detention. The court has carefully reviewed this matter and finds that the suppression of evidence ordered by this filing constitutes a material change in circumstances under 18 U.S.C. § 3142(f) and warrants the reopening of the issue of whether Vanderwerf should be detained or released. The clerk is directed to refer this motion to United States Magistrate Judge Kimberly A. Swank for a new detention hearing and appropriate disposition.

This 6<sup>TH</sup> day of February 2018.

  
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Malcolm J. Howard  
Senior United States District Judge

At Greenville, NC  
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